

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

NOTICE OF MARKET-DOMINANT
PRICE ADJUSTMENT

Docket No. R2018-1

**UNITED STATES POSTAL SERVICE RESPONSE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**
(October 27, 2017)

The Postal Service hereby files its response to Chairman's Information Request (CHIR) No. 6, issued on October 25, 2017. Each question is stated verbatim and followed by the response. A nonpublic version of "ChIR6.Q5," which is referenced in the response to Question 5, is being filed under seal, and the Postal Service incorporates by reference the application for non-public treatment that it included as Attachment 1 with its filing of Library Reference USPS-LR-R2018-1/NP1.¹

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony Alverno
Chief Counsel, Global Business & Service
Development

Peter Karalis
James M. Mecone
Christopher C. Meyerson
Jeffrey A. Rackow

¹ Notice of the United States Postal Service of Filing of USPS-LR-R2018-1/NP1, Docket No. R2018-1, October 6, 2017.

475 L'Enfant Plaza, SW
Washington, D.C. 20260-1137
(202) 268-6858
James.M.Mecone@usps.gov

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

1. Please refer to Library Reference USPS–LR–R2018–1/NP1, October 6, 2017, Excel files “USPS-FY16-41.xls,” “Q117_MKT_DOMINANT_INTL_BD.xls,” “Q217_MKT_DOMINANT_INTL_BD.xls,” and “Q317_MKT_DOMINANT_INTL_BD.xls.”
 - a. Does the Postal Service object to filing an additional public library reference containing the files identified above? If not, please file an additional public library reference with unredacted versions of these Excel files with the response.
 - b. If the Postal Service objects to submitting these files in a public library reference, please explain the basis for the objection.
 - i. Please identify the specific statutory basis for the objection, justify the application of the statute to the above-identified Excel files in USPS–LR–R2018–1/NP1, and explain the nature and extent of the commercial harm alleged to result from disclosure and the likelihood of such harm occurring. See 39 C.F.R. §§ 3007.21(c)(1), (4).
 - ii. Please explain the likelihood of the commercial harm alleged to result from disclosure given that the Postal Service has made outbound market dominant billing determinant information public in other documents filed before the Commission. See, e.g., Docket No. ACR2016, Library Reference USPS–FY16–41, December 29, 2016. Please refer also to ZIP folder “documents.zip,” folder “1Q17 Billing Determinants – Public,” Excel file “1Q17 Mkt Dominant Intl BD – Public.xls;”² ZIP folder “2Q 2017 Billing Determinants_PUBLIC.zip,” folder “2Q 2017 Billing Determinants – Public (6-6-2017),” Excel file “2Q17 Mkt Dominant Intl BD – Public.xls;”³ and ZIP folder “Billing Determinants_Q3_FY2017_Public.zip,” folder “Q3 2017 Billing Determinants – Public (8-24-2017),” Excel file “3Q17 Mkt Dominant Intl BD – Public.xls.”⁴
 - iii. Please specify if the objection applies to all or a particular part or tab of the above-referenced Excel files.

² Billing Determinants for Quarter 1 of Fiscal Year 2017, March 30, 2017, available at: <https://www.prc.gov/dockets/document/99678>.

³ Billing Determinants for Quarter 2 of Fiscal Year 2017, June 6, 2017, available at: <https://www.prc.gov/dockets/document/100291>.

⁴ Billing Determinants for Quarter 3 of Fiscal Year 2017, August 24, 2017, available at: <https://www.prc.gov/dockets/document/101341>.

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

RESPONSE:

- a. See Library Reference USPS-LR-R2018-1/8. Although the requested information is being disclosed publicly in response to this question, the Postal Service is continuing to consider the status of this information and reserves the right to file and maintain similar information under seal in the future.
- b. N/A.

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

2.
 - a. What is the legal basis for the statement that changes in rates for Inbound Letter Post are "outside the Postal Service's control"?
 - b. If these rates are not determined by the Postal Service, what government agency requires the Postal Service to implement these rates and under what legal authority?
 - c. Please submit copies of all legal directives or analyses which establish or substantiate the statement that the rates for Inbound Letter Post are "outside the Postal Service's control" and identify the authority that exercises such control.

RESPONSE:

- a. The United States is a member country of the Universal Postal Union (UPU).

The United States has signed and ratified the UPU Constitution, and the UPU Constitution is binding international law. The protocol to the UPU Constitution currently in effect was signed at the UPU 2008 Geneva Congress. See United States Department of State Treaties in Force A List of Treaties and Other International Agreements of the United States in Force on January 1, 2017 (<https://www.state.gov/documents/organization/273494.pdf> (at page 536)); see also Member Countries of the Universal Postal Union Indicating their Contribution Class, Geographical Group and Legal Situation with Regard to the Acts of the Union, Position at 1 September 2017 (http://www.upu.int/uploads/tx_sbdownloader/actMemberCountriesLegalSituationEn.pdf (at page 7)). No amendments to the UPU Constitution occurred at the UPU 2012 Doha Congress. Under Article 33, the UPU Constitution remains in force for an indefinite period of time.

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO CHAIRMAN'S INFORMATION REQUEST NO. 6

Response to Question 2 (continued)

Article 22.3 of the UPU Constitution, which the United States has signed and accepted, obligates all UPU member countries to abide by the terms of the Universal Postal Convention, along with the Letter Post Regulations. That article provides:

3 The Universal Postal Convention, the Letter Post Regulations and the Parcel Post Regulations shall embody the rules applicable throughout the international postal service and the provisions concerning the letter-post and postal parcels services. These Acts shall be binding on all member countries. Member countries shall ensure that their designated operators fulfil the obligations arising from the Convention and its Regulations.

The United States signed the text of the Acts, including the Convention, at Doha in 2012. As seen in the document "List of Member Countries of the Universal Postal Union Indicating their Contribution Class, Geographical Group and Legal Situation with Regard to the Acts of the Union" (Position at 15 June 2015),⁵ approximately two-thirds of the member countries of the Universal Postal Union, as of June 15, 2015, had signed the 2012 Doha Acts, of which the Universal

⁵ See List of Member Countries of the Universal Postal Union Indicating their Contribution Class, Geographical Group and Legal Situation with Regard to the Acts of the Union, Position at 15 June 2015. A copy is attached to this response. Subsequent versions of this document posted on the UPU website do not indicate the legal situation with respect to the 2012 Convention. Based on a review of UPU circulars issued since June 15, 2015, 19 member countries have indicated that they have taken further action on the Doha Convention. These include Albania, Australia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Chile, China, Croatia, Cuba, Cyprus, Czech Republic, Israel, Lesotho, Moldova, New Zealand, Saudi Arabia, Singapore, and United Arab Emirates. See UPU Circular No. 105 (2017); UPU Circular No. 55 (2017); UPU Circular No. 9 (2017); UPU Circular No. 172 (2016); UPU Circular No. 114 (2016); UPU Circular No. 53 (2016); UPU Circular No. 19 (2016).

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 2 (continued)

Postal Convention forms a part, but a small number of the member countries that had signed the 2012 Doha Acts have taken further steps to accept the 2012 Doha Universal Postal Convention. Thus, for the 2012 cycle, the practice of signature of the Convention text was common; subsequent action in the form of further acceptance was not.

This comports with 39 U.S.C. § 407(b), through which the Secretary of State has the express power to conclude postal treaties and conventions. Under section 407(c), before concluding any postal treaties or conventions that establish market dominant rates, the Secretary solicits the Commission's views on whether such rates comport with certain of the Commission's regulatory standards. In 2012 and 2016, the State Department complied with this requirement; it solicited and considered the Commission's views on proposals for terminal dues prior to the UPU 2016 Istanbul Congress. See Docket Nos. IM2012-1, IM2016-1. The State Department officials, acting with delegated authority from the Secretary of State, then concluded the Universal Postal Convention to take effect in 2014 and 2018 by signing the Acts at the Doha and Istanbul Congresses.

More recent information about the legal situation of each member country insofar as its signature, approval, or ratification of the Istanbul Acts is available through

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 2 (continued)

the following web address:

[http://www.upu.int/uploads/tx_sbdownloader/actMemberCountriesLegalSituation](http://www.upu.int/uploads/tx_sbdownloader/actMemberCountriesLegalSituationEn.pdf)

[En.pdf](#). As shown, as of September 1, 2017, about 129 of the 192 member countries (including the United States) had signed the Istanbul Acts. However, as of the date of the document, according to official information furnished by the International Bureau, only one member country (Japan) had given notice that it had taken additional actions to accept those Acts.

- b. As explicitly set forth in the UPU Constitution under Article 1bis.1.7, designated operators are those entities that UPU member countries designate to fulfill the member countries' obligations arising from the UPU Acts on their respective territories. As the designated operator of the United States, the Postal Service fulfills this role and discharges the obligations of the Universal Postal Convention insofar as it establishes obligations for designated operators.
- c. See response to Question 2(a) above. See also Universal Postal Convention, Articles 29 to 33. These provisions establish the rates for terminal dues, and do not allow for countries to unilaterally establish them. Moreover, reservations are not permitted in connection with the terminal dues provisions in Articles 30 and 31. To the contrary, as expressly set forth in Articles 30.16 and 31.9, the only exceptions to the terminal dues rates that are permitted for any member countries are those established by bilateral agreement. In applying terminal dues

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 2 (continued)

to foreign origin international mail, the Postal Service is simply following the same practice as used in prior rate filings since the enactment of the PAEA. There is no basis to reach a different outcome in this proceeding. Interpretation of the UPU Acts is ultimately the responsibility of the Department of State. To the extent the Commission wishes to inquire into these matters further, it recommends that the Commission consult personnel responsible for representation of the United States in the UPU. The Postal Service respectfully submits that this proceeding is not the proper forum to so inquire into these matters, considering its scope and timeframe.

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

3.

- a. If the Postal Service is legally obliged to charge UPU terminal dues rates for delivery of Inbound Letter Post received from some UPU member countries, to which origin countries does this obligation apply?
- b. For clarification, please identify which UPU member countries were bound, as a matter of international law, to implement the terminal dues rates of the 2012 UPU Convention on January 1, 2014?
- c. Which countries are today bound to implement the terminal dues rates of the 2012 UPU Convention?
- d. Which UPU member countries are likely to be bound, as a matter of international law, to implement the terminal dues rates of the 2016 UPU Convention on January 1, 2018?
- e. Please provide any documentation or legal analyses which provide the basis for the above answers.

RESPONSE:

- a. As the designated postal operator of the United States, the Postal Service is obliged to charge the UPU terminal dues rates to all 192 member countries that originate letter post destined for the United States, except to the extent that the Postal Service has entered into bilateral agreements with the postal operators of other countries for certain inbound letter post streams. The list of member countries is available through this web address: <http://www.upu.int/en/the-upu/member-countries.html>. To the extent that the Postal Service has bilateral agreements that establish rates for inbound letter post after the implementation of the Postal Accountability and Enhancement Act, the Postal Service has filed such agreements with the Commission, and the Commission has approved those rates.

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 3 (continued)

- b. See the list of 192 UPU member countries available through this web address:
<http://www.upu.int/en/the-upu/member-countries.html>. See also UPU Convention Articles 30.16 & 31.9.
- c. See responses to Questions 3(a) and (b).
- d. Information about the status of UPU members' signature, approval, or ratification of the 2016 UPU Acts is available through the following web address:
http://www.upu.int/uploads/tx_sbdownloader/actMemberCountriesLegalSituationEn.pdf. As set forth in the response to Question 2(a), all 192 member countries are expected to be bound by the terminal dues rates effective on January 1, 2018, except to the extent that they have agreed on different rates on a bilateral basis.
- e. See response to Question 2(a).

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

4.

- a. If the Postal Service is not legally obliged to charge UPU terminal dues rates for delivery of Inbound Letter Post, then is the legal basis for the proposed rates found under 39 U.S.C. § 404(b)?
- b. If yes, what considerations, if any, justify charging more or less for the delivery of Inbound Letter Post than for the delivery of similar domestic mail (i.e., domestic mail with similar characteristics that has been aggregated and tendered in a similar manner)?
- c. Why should rates for the delivery of Inbound Letter Post not be equally available to domestic mailers under the same conditions?
- d. Please provide any documentation or legal analyses which provide the basis the above answers.

RESPONSE:

a. N/A

b. N/A

- c. There are significant differences in the conditions for the shipment of items through Inbound Letter Post rates and the shipment of items by domestic mailers. For example, the Postal Service does not incur the cost of maintaining a network for collection of foreign origin mail, thereby making it less useful to compare Inbound Letter Post rates to domestic published rates, which do include the cost of collection. In addition, foreign origin mail is not necessarily analogous to single-piece mail because it can be presented in larger quantities or in bulk, and thus single-piece published rates may not serve as an appropriate point of comparison between domestic and foreign-origin shipping prices.

Inbound Letter Post rates also reflect unique policy and statutory concerns that do not apply to shipments by domestic mailers. Section 407(a) of Title 39

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 4 (continued)

establishes a policy of the United States “to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes.” Consistent with this policy, the United States participates in the UPU. As the designated operator of the United States, the Postal Service must comply with the UPU terminal dues provisions and other UPU provisions that are important for the establishment and continuation of an international communication network.

- d. See the response to Question 2(a) above.

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

5.
 - a. Please provide a comparison by domestic rate cell of (1) the rates proposed for delivery of Inbound Letter Post, (2) the rates proposed for the delivery of equivalent domestic mail as determined by the Postal Service, and (3) the rates proposed for the delivery of equivalent domestic mail as determined according the UPU's estimation that terminal dues should be equal to 70 percent of domestic first class retail rates.
 - b. Please explain specifically how the rates in item (2) are calculated and the differences, if any, from the rates in item (3).

RESPONSE:

a-b. "A comparison by domestic rate cell of (1) the rates proposed for delivery of Inbound Letter Post" would be impractical as there are more than 28,000 distinct domestic rate cells. However, the attachment "ChIR6.Q5_Public," provides an example of the range of domestic postage rates from the highest proposed retail rate to the lowest published commercial rate compared with inbound letters and flats.

It is difficult to determine the precise rates proposed for the delivery of "equivalent domestic mail." The recent GAO report to Congressional Committees entitled *International Mail: Information on Changes and alternatives to the Terminal Dues system* points out that some of these comparisons are complicated as the domestic product can include tracking, delivery, confirmation, and faster delivery times. For example, inbound letter post packets are not equivalent to domestic First Class Mail Packages and Priority Mail products. Comparing these products and associated pricing is complicated, because they offer different features. Inbound Letter Post packets sent under the terminal

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 5 (continued)

dues system do not include any tracking or delivery confirmation, and all USPS domestic package products include tracking and have delivery times from as short as one day to an average of 2 to 3 days. The domestic products also include other features, such as built-in insurance and free packaging supplies.

Regarding "the rates proposed for the delivery of equivalent domestic mail as determined according the UPU's estimation that terminal dues should be equal to 70 percent of domestic first class retail rates," the 70 percent of the domestic charges for a priority letter and flat are inputs into the terminal dues methodology for calculating country-specific terminal dues rates for letters and flats. The UPU has not "estimated" that terminal dues should be equal to 70 percent of domestic First Class Mail retail rates. Comparisons of inbound terminal dues to full domestic retail rates and/or 70 percent of full domestic retail rates are not appropriate. First, approximately 85 percent of USPS domestic mail uses commercial or discounted rates for mail that is entered in bulk and prepared in a way that reduces USPS's costs, including barcoding, presorting, and entry into USPS's system closer to its final destination. Only 15 percent of USPS domestic mail is mailed at full domestic single-piece retail rates. Inbound international mail is received in bulk, with the majority of letters prepared and faced in letter trays, flats in flat tubs, and packets in bags. This avoids collection and processing

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 6**

Response to Question 5 (continued)

costs that are incurred for domestic single-piece mail. Therefore, Inbound Letter Post is not analogous or equivalent to USPS's single-piece mail.